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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re	)	
	)	
Amendment of the Commission's Rules	)	WT Docket No. 97-82
Regarding Installment Payment	)	
Financing for Personal Communications	)	
Services ("PCS") Licensees	)	
Installment Payment Restructuring	)	

To: The Commission

PETITION FOR RECONSIDERATION

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November 24, 1997

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Summary

Alpine PCS, Inc. ("Alpine"), petitions for reconsideration of the Commission's *Second Report and Order and Further Notice of Proposed Rule Making*, FCC 97-342 (October 16, 1997), 62 Fed. Reg. 55375 (October 24, 1997 (*"C Block Order"*). The *C Block Order* followed C block licensees' requests to the Commission to restructure their installment payment debt. Those requests catalogued the severe financial pressures C block licensees are facing, which threaten the existence of those financially strapped licensees and portend the collapse of the entire C block, and with it, the elimination of viable entrepreneurial competition for broadband wireless service.

Unfortunately, the Commission's response, was an ill conceived effort to "maintain the integrity of [its] rules and auction processes," *C Block Order* at 2, which offers scant relief to financially distressed licensees.

The first of the Commission's four options, merely maintains the status quo, offering no relief whatsoever. Although a few C block licensees might selectively take advantage of the dis-aggregation option, it comes at a dear cost, forfeiture of the entire down payment for the dis-aggregated spectrum, and with the string that dis-aggregation must be chosen for all licenses held in any MTA. The so-called amnesty option is likewise unpalatable, requiring licensees to turn in all their C block spectrum and to forfeit their entire down payments thereon. As for the buyout option, the obligation that licensees must buy out all the licenses

they do not surrender to the Commission substantially limits the utility of this option, as does the forfeiture of 30 percent of the down payments associated with those licenses. In any event, this option suffers from the fatal flaw that any C block licensee which is truly an entrepreneur, attempting to prepay its installment debt, will face a cost of capital well in excess of its seven percent government financing.

Alpine urges the Commission to offer viable financial restructuring alternatives which will allow the C block and individual C block licensees to survive as an entrepreneurial competitive force. As to the dis-aggregation option, the Commission should eliminate the forfeiture of any amount of the down payment of a licensee opting to dis-aggregate its spectrum. In addition, the Commission should allow dis-aggregation on a BTA basis, and not require the licensee to dis-aggregate every BTA license held in an MTA. As to the amnesty option, the Commission should revise the requirement for the forfeiture of down payments so that licensees have some incentive to accept this option. Likewise with respect to the buyout option, at a minimum, full credit should be given toward the payoff for retained licenses of down payments for any licenses surrendered to the Commission. Moreover, to adequately reflect the cost of capital for block C licensees which are in financial distress, the Commission should not require payment of the nominal bid price, but rather should focus on the true price as reflected by the time value of money at the below market (government) rate now available to C block licensees.

Furthermore, additional relief options are warranted. The Commission should extend the license term for broadband PCS entities to 20 years, modify principal and interest payments to an annual basis, place a moratorium on interest payments for a period of up to five years, and reduce the interest rate to that prevailing at the beginning of the auction.

By reconsidering its decision as Alpine suggests, the Commission will help ensure the financial health of the entire C block and will ensure the public the benefit of entrepreneurial competition.

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To: The Commission

PETITION FOR RECONSIDERATION

Alpine PCS, Inc. ("Alpine"), by its attorneys and pursuant to FCC Rule Section 1.429 petitions for reconsideration of the Commission's *Second Report and Order and Further Notice of Proposed Rule Making,* FCC 97-342 (October 16, 1997), 62 Fed. Reg. 55375 (October 24, 1997 (*"C Block Order"*) in the above-referenced proceeding, and shows the following:

I. Introduction.

1. The *C Block Order* arose following C block licensees' requests to the Commission to restructure their installment payment debt. Those requests catalogued the severe financial pressures C block licensees are facing. Those pressures threaten the existence of financially strapped licensees. They threaten the collapse of the entire C block, and with it the elimination of viable entrepreneurial competition for broadband wireless service.

2. Unfortunately, the Commission's response to the C block's financial pain is ineffective. In an ill conceived drive to "maintain the integrity of the Commission's rules and auction processes," *C Block Order* at 2, the Commission has formulated

medicine for relief that is so bitter that few, if any, licensees will be able to stomach it. This will be apparent January 15, 1998, when the Commission will see that few licensees take advantage of any of their three "relief" options. By then more valuable time will have passed, during which more, not fewer, licensees will be inflected with the spreading financial plague crippling the C block. By then, much stronger medicine will be required to save the C block from its demise as a viable broadband wireless alternative.

3. Alpine therefore urges the Commission to expeditiously heal the C block by offering viable financial restructuring alternatives which will allow the C block and individual C block licensees to survive as a competitive force, and therefore to provide the public with entrepreneurial wireless competition.

II. Alpine's interest.

4. Alpine is a broadband PCS licensee in the C, E and F blocks. As a C and F block licensee, the resolution of the installment issues raised herein vitally affect Alpine and its ability to expeditiously institute broadband PCS service in its various markets. Alpine was a signatory to the request filed with the Commission March 13, 1997, to modify PCS installment payment obligations from quarterly to annually.[1/] Alpine filed comments in response to the FCC's *Public Notice*, DA 97-679 (June 2, 1997), and a response to the other comments submitted thereon.

[1/] *See* Letter from Thomas Gutierrez, Esq., et al to Michele C. Farquhar, Esq., Chief, Wireless Telecommunications Bureau.

5. Review of the record established to date, including events following issuance of the *C Block Order*, present a compelling basis for the Commission to reconsider the *C Block Order*. The Commission must restructure PCS block C installment payments, not to provide individual relief to particular licensees who may have overbid for certain markets, but rather to resuscitate the health of the C block, foster diversity in spectrum ownership and service offerings, and insure the success of future spectrum actions.

III. The C block is in critical condition.

6. The predicate for Alpine's seeking reconsideration of the *C Block Order* is not that individual C block licensees are in danger of succumbing -- which they most certainly are -- but that the promise of wholesale defaults by C block high bidders threaten the viability of the entire C block. As of this writing, the second and third largest C block bidders are in bankruptcy proceedings. Other multiple system owners are teetering on the brink of Chapter 11 filings. The largest C block bidder, NextWave, publicly announced several months ago that it was indefinitely suspending construction of several of its regional systems. Other multiple system owners have also suspended construction of their systems due to lack of available funds. There is thus no doubt that licensees holding an overwhelming majority of C block licenses are in critical financial condition. That is, of course, a bad situation for them and for the FCC. What is worse, is that those licensees have infected the remainder of the C block, which may

very well succumb in its entirety without radical curative action. The public will be denied meaningful entrepreneurial competition as a result of the C block's demise.

7. It is well beyond the time to fix blame for the position the Commission finds the C block. Suffice it to say that the particular structure of the C block auction, combined with events either substantially beyond the control of or simply not foreseen by either the Commission or bidding parties, caused bidders to escalate prices. In some cases the bidders were de novo small businesses with naive notions as to the financial markets; in other cases they were faux "small businesses" who did not realize what impact the billions they needed to fund the development of their markets, along with the scores of billions of dollars required by the A, B, D, E, & F block bidders to do the same, would have on the financial markets; and in all cases, after the delays associated with the C block auction were over, the bidders faced far more critical financial markets than expected. The bottom line, however, is that these bidders now lack sufficient capital to develop the licenses on which they were bidding. In short, PCS auctions have created a substantial supply of broadband licensees, which has in turn created a scarcity of funds available from the capital markets to finance them.

8. The unforeseen lack of capital available for system construction and commencement of operation now threatens the entire C block as various C block licensees continue to fall behind in the race for what capital is available. Not only do they have the

various established cellular licensees ahead of them, they also must compete in the capital markets with A and B block licensees, almost all of whom are affiliates of Bell Operating Companies or major interexchange carriers. All of these entities further enjoy a significant, unplanned and growing head-start on the entrepreneur block licenses.

9. Although not every C block licensee's situation is dire, wholesale defaults in the C block are now and will in the future severely impact the entire block of licenses. This is because wireless customers expect to use their PCS phones to roam into other markets. If they cannot, they will go to the provider who can assure roaming. For example, as the C block licensee of the Santa Barbara BTA, Alpine's business plan is predicated on its customers being able to roam on the neighboring Los Angeles BTA block C PCS system, as well as on other nearby block C systems. If Alpine's customers are unable to do so because the Los Angeles block C licensee defaults or is severely delayed in constructing its system, Alpine will likely lose the bulk of its subscribers to a carrier which can assure roaming. This situation repeats itself throughout the country. Given that substantially more than a majority of C block licensees are threatened, the fortunes of all C block licensees are tied together.[2/]

[2/] In her concurring statement, Commissioner Ness minimized this problem, asserting, "the marketplace recognizes the problem, and has been working on a solution. Equipment manufacturers are helping to forge agreements, that will enable the PCS equipment to roam nationwide, and new handsets operate on both cellular and PCS frequencies." With all due respect to the (continued...)

10. The Commission's *C Block Order*, was a critical decision for Alpine and all other C block licensees. Unfortunately, the *C Block Order* -- while well intentioned -- did little to cure the C block's affliction.

IV. The *C Block Order* offers scant financial relief.

11. The *C Block Order* offered cash strapped C block licensees four alternatives from which they must select by January 15, 1998. A licensee may: (1) *Maintain its existing note obligations*, making its next payment by March 31, 1998, and pay any interest which has accrued since the March 31, 1997 payment suspension in equal amounts over eight quarterly payments; (2) *Dis-aggregate* one-half of its spectrum (15 of 30 MHz) for any or all of its licenses and return such spectrum to the Commission for re-auction with a proportionate amount of its debt forgiven, and with 50 percent of its down payment retained by the Commission, for a loss of that portion of the down payment;[3] (3) *Return* all of its licenses in

[2](...continued)
Commissioner's argument, however, it is misplaced. That the market is working on a solution, does not mean that solution is here. Simply listening to wireless mobile telephone advertising, will demonstrate how important is the ability to roam. In the Washington area, Bell Atlantic has made a point of touting the ability to roam on its system compared to PCS carriers. Clearly the market has not yet solved this roaming problem. As the Commission realized, time is critical. Allowing the C block to flounder in a non-competitive position, even for a short period of time, will cause other segments of the industry to become more entrenched. Moreover, dual handsets are not the answer. They are substantially more expensive than single band PCS phones, and more complicated for customers to use.

[3] If a licensee chooses to dis-aggregate any spectrum for any BTA in any MTA it must do the same for all other BTAs it holds (continued...)

exchange for cancellation of its debt with a forfeiture of the entirety of its down payments;[4] (4) *Prepay* "at face value" all of its BTA licenses held within any MTA(s), surrendering any licenses not prepaid with cancellation of the debt for such surrendered licenses and a loss of 30 percent of the down payments made on those cancelled licenses. Unfortunately, the alternatives the Commission is offering are, singly and in the aggregate, not meaningful.

12. The first option, of course, offers no relief whatsoever. Each of the other three options comes at the price of a substantial forfeiture of the licensee's down payment, a bitter pill to swallow. Although a few C block licensees might selectively take advantage of the dis-aggregation option, it comes at a dear cost, forfeiture of the down payment for the dis-aggregated spectrum, and with the string that disaggregation must be chosen for all licenses held in any MTA.

13. The so-called amnesty option is likewise unpalatable. Requiring licensees to turn in all their C block spectrum and to forfeit their entire down payments thereon requires licensees to liquidate and accept a substantial penalty for doing so. Although

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[3] (...continued) in that MTA. The licensee may not bid at re-auction on any spectrum which it turns in or acquire that spectrum in the secondary market for two years thereafter.

[4] Licensees are not required to return any license for which they met the five year build-out requirement by September 25, 1997. Any licensee taking advantage of this "amnesty" option would not be restricted from bidding at re-auction on any licenses or in making aftermarket acquisitions.

theoretically some licensees might accept this option with the intent to bid in the re-auction and with the hope of receiving their previous (or other) licenses at a discount, Alpine does not believe many licensees will take that risk. These licensees could fair far better in Chapter 11 -- where a bankruptcy court would likely substantially write down their debt, while allowing them to keep their licenses. And, as discussed above, if substantially more C block license holders go the Chapter 11 route, it will serve only to delay their ultimate commencement of operation to the detriment of the rest of the C block, with the ultimate result that there will likely be many more defaults.

14. Likewise, the prepayment option offers licensees no real relief. The obligation that licensees must buy out all the licenses they do not return to the Commission substantially limits the utility of this option. And although the Commission's proposal to credit a portion of the down payment made on the returned licenses against the funds needed to effect the buyout is a step in the right direction, the loss of 30 percent of the down payments made on those returned licenses render this option punitive to any licensee otherwise disposed to accept it.

15. More fundamentally, however, the prepayment option lacks financial common sense. Simply stated, the prepayment option suffers from the fact that any C block licensee which is truly an entrepreneur attempting to prepay his installment debt will face a cost of capital well in access of his seven percent government financing. In today's market, and given that the licensee is in

financial distress that cost of capital would be approaching 20 percent. Thus, for the licensees most needing it, the prepayment option is illusory and cost ineffective. Again, Chapter 11 would offer more relief.

V. Realistic relief is necessary to save the C block.

16. Given that the options offered by the *C Block Order* fail to offer any substantial relief, and the likelihood of further C block defaults, the Commission should reconsider its *C Block Order* in several respects.

17. First, with respect to the dis-aggregation option, the Commission should eliminate the forfeiture of any amount of the down payment of a licensee opting to dis-aggregate its spectrum. In addition, the Commission should allow dis-aggregation on a BTA basis, and not require the licensee to dis-aggregate every BTA license held in an MTA. Concerns with respect to maintaining the integrity of the auction process can better be served by declining to allow any entity dis-aggregating spectrum to bid on that spectrum in the re-auction.

18. Second, with respect to the amnesty option, the Commission should revise the requirement for the forfeiture of down payments so that licensees have some incentive to accept this option. For those entities *not* participating in the re-auction, a substantially lesser penalty, keyed at most to the estimated cost incurred in re-auctioning the spectrum, would be a more appropriate means of insuring the integrity of the Commission's auction processes than total loss of the down payment. As to those

entities who would desire to bid on such spectrum in the re-auction, a penalty of at most 30 percent of the previously made down payment would be appropriate. Moreover, the Commission should eliminate the requirement that all licenses be turned in under this option. A licensee should be entitled to turn in any or all of its licenses under this option.

19. Third, with respect to the prepayment option, the Commission should likewise provide licensees some incentive to accept this option. As presently constituted, this option provides disincentives for licensees to accept its terms. At a minimum, full credit should be given toward the payoff for retained licenses of down payments for any licenses surrendered to the Commission. Moreover, to adequately reflect the cost of capital for block C licensees which are in financial distress, the Commission should not require payment of the nominal price, but rather should focus on the true price as reflected by the time value of money at the below market (government) rate now available to C block licensees. Assuming a cost of capital of 25 percent for the C block licensees having to replace an obligation to the Treasury with venture capital financing, a 59 percent discount from face amount of the note would account for the present value of the Commission's financing. Accordingly, in authorizing the prepayment option, the Commission should adopt a discount that is reflective of the licensee's cost to replace the installment notes, which is approximately 59 percent to account for the benefit of the installment debt at seven percent.

20. Fourth, as Alpine discussed in its comments on the June 2, 1997 *Public Notice* in this proceeding, even the seven percent figure did not reflect the government's true cost of funds when the C block auction commenced. When the C block auction commenced in December of 1995, the yield on the 10 year Treasury Note was 5.56 percent. It subsequently rose to 6.53 percent when Alpine's block C licenses were awarded. The Commission, however, set the interest rate for Alpine's installment payments at the coupon rate of the Treasury Note, seven percent, which had no relation to the government's actual cost of funds. The installment payment interest rate should be reset to 5.56 percent, which was the government's cost of funds when the auction began. This was the rate on which Alpine and other PCS ventures based their bidding strategy.

21. Licensees should, of course, know their cost of funds when they bid. The choice of the coupon rate, which is arbitrarily set by the Treasury, or the yield when the licenses were issued well after bidding closed, is unfair to licensees and serves to add unnecessary uncertainty to the auction process. It has no relation whatsoever to the actual cost of funds when the government sells notes. That is determined by the discount rate at which parties bid in the auction for those notes. And it is that discount rate in the primary auction market which forms the basis for the yield obtained by sellers in the Treasury secondary market. The Commission should, therefore, modify the interest rate to the yield

existing when the C block auction commenced.[5/] Adoption of this suggestion would have the added benefit that it would not lessen the principal payments due the government under the auction, but it would offer substantial relief to distressed licensees.

22. Fifth, as Alpine also suggested in its comments on the June 2, 1997 *Public Notice*, extending the license term for broadband PCS entities to 20 years and spreading principal and interest payments over that period would have a variety of beneficial effects, including encouraging investment and innovation in the service by ensuring a longer time horizon during which licensees may execute their business plans. *See Revision of Direct Broadcast Satellite Service Rules*, 11 FCC Rcd 1297, para. 71 (1995). As such, an extension of the licensing term would be fully justified pursuant to Sections 303 and 4(1) of the Act and would serve to provide substantial relief to C block licensees in financial distress. Accordingly, and in view of the public interest benefits that would flow therefrom, the Commission should reconsider its *C Block Order*, and exercise its discretion to lengthen the license term for broadband PCS entities to 20 years.

23. Sixth, the Commission should reconsider its *C Block Order* to modify principal and interest payments to an annual basis. This was the basis for the suggestion originally contained in the March 13, 1997, request filed by Alpine and several other C block

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5/ Alternatively, the average yield to the government at the most recently preceding treasury auction would also be a more appropriate vehicle to approximate the cost of funds to the government.

licensees. Adoption of this proposal would have no effect on revenues generated for the government, while offering relief for PCS licensees who are experiencing short term financing difficulties.

24. Seventh, the Commission should reconsider its *C Block Order*, and place a moratorium on interest payments for a period of up to five years. Adopting an interest payment moratorium will substantially free necessary capital to allow system construction and commencement of operations for the bulk of C block licensees. Having effected system construction and commenced operations, licensees should by then be in a sufficient position to generate sufficient cash flow to allow at first interest only, and subsequently interest and principal payments.[6/]

VII. Conclusion.

25. Full buildout of the C block spectrum is critical for the long-term viability of all C block licensees. The longer that a dysfunctional C block is allowed to flounder, the less will be its ability ever to provide meaningful competition to the entrenched

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[6/] Since many bona-fide entrepreneur C block licenses have been placed in limbo until the fate of the large adjacent BTA C block carriers are known with certainty, and thus these licensees can neither make a technology choice nor obtain vendor financing, additional relief is warranted. Alpine suggests the Commission suspend the accrual of interest from the date of license grant until 90 days after the Commission issues re-auction licenses, and any interest paid to date should be returned. Moreover, since the licenses awarded in the original C block auction have diminished in value and continue to diminish while the pleadings and re-auction grind on, the price paid for each so affected BTA should be adjusted downward by 15 percent per annum from the date of license grant until 90 days after the Commission issues re-auction licenses.

cellular carriers and the headstart of the A and B PCS block carriers. Should the Commission continue to deny meaningful relief to the C block, it will mean in the short term no competition from C block licensees; ultimately, it will mean that the C block will become nothing more than another block of spectrum held by the large telephone companies which they will purchase at distressed sale prices at re-auction or from financially troubled licensees. The Commission should thus focus on the effect of its decision herein on legitimate small business participation.

26. The *C Block Order* fails to recognize that a substantial group of small business entities like Alpine have been caught in a vise. They had to win markets away from the larger players who as it turns out were incapable of meeting their financial commitments. Now they are dependant on those same large players who won almost all of the major C block markets to build out their markets so that together they may ultimately offer attractive wide area coverage to compete with cellular and PCS A and B block licensees. In the absence of decisive Commission action on reconsideration, these

legitimate entrepreneurs could suffer the same fate as their more ambitious brethren. That would not be in the public interest.

Respectfully submitted,

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